Stolen Art Alert

Volume 3 Number 9
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Clouds Dispersed

The Sisters Paine, subject of a $12 million lawsuit against Sotheby's.

Travis v. Sotheby Parke Bernet

A $12 million libel suit brought against Sotheby's for purportedly falsifying the appraisal of an old master painting has been judged in favor of the auction house. The suit was brought by Stuart Travis, a successful sales representative for a major financial institution. On November 17, 1977 Travis attended a Plaza Galleries auction in New York City, and purchased a painting described in the catalogue as a portrait of the Sisters Paine, by Sir Joshua Reynolds. The purchase price was $17,000. According to later testimony, this was the first purchase Travis had ever made at an art auction.

The following July, Travis offered the painting as a gift to The Metropolitan Museum of Art, and it was accepted in a letter from Sir John Pope-Hennessey, chairman of the European Paintings Department. But as later became apparent, Mr. Travis wanted more than the pleasure of giving a painting to a leading institution. He wanted a substantial tax deduction. The Metropolitan suggested that he obtain an appraisal for tax purposes from the Art Dealers Association of America, but Travis rejected this suggestion, since he would have had to commit the donation beforehand in order to receive an ADAA appraisal. He was unwilling to make the gift until he knew the fair market value of the work, which he evidently believed was greatly in excess of what he had paid for it the previous year. The Metropolitan eventually suggested, and he agreed to, an appraisal by Brenda Auslander, head of the Old Master Paintings Department of Sotheby's.

In September 1978, Ms. Auslander inspected the painting, and subsequently the firm issued a certificate of authenticity and an appraisal of $30,000. The certificate, however, stated that the painting was by Tilly Kettle — a contemporary follower of Reynolds whom the master himself had once sued for imitating him — and not by Reynolds himself.

The Museum was willing to accept the painting under this attribution, but the donor declined and eventually dropped the matter. Instead, in 1979 he sued Sotheby's for issuing a false appraisal, for negligence in conducting its appraisal, and for willfully conspiring to damage Travis and his property, thus causing him to lose credibility in the art world. With the addition of damages, the claim against Sotheby's totaled $12 million.

The painting had been published as by Reynolds in various scholarly works during the 19th and early 20th centuries, and had been sold once and appraised once under this attribution by Sotheby's or its American predecessor, Parke Bernet Galleries. In March 1940, the painting had come up for sale in New York and was sold to Marcia Brady Tucker. At this time, an illustration of it appeared on the cover of *Art News* magazine in connection with an article about the forthcoming sale at Parke Bernet. After Miss Tucker's death in 1976, the painting was appraised by Sotheby Parke Bernet for tax purposes, again as a work by Reynolds. From this, Travis charged that "when Sotheby Parke Bernet has a monetary interest, either as auctioneer or as appraiser, in the subject painting, it is represented to be a work by Sir Joshua Reynolds, but when defendants had no such interest in the painting, it became the work of Tilly Kettle."

The trial of the case by Justice Francis X. Becker focused wholly on the conduct of the defendants in appraising the painting. Miss Auslander testified that prior to doing the appraisal she had seen the painting in an auction sale. At that time, she had learned that there were questions about its authenticity. Upon returning from the auction, she had looked for, and failed to find, the work in a recent monograph on Reynolds' portraits by Sir Ellis Waterhouse. Through Sotheby's in London, she had indirectly solicited Sir Ellis' opinion, and learned that he believed the painting to be by Tilly Kettle.

The plaintiff charged that Auslander, in relying only on the opinion of one expert, was not acting according to acceptable appraisal practice. The Court then adjourned to

Mr. Travis' living room where experts for plaintiff and defendant respectively discussed the painting's merits and its value. Sir Ellis Waterhouse testified as to the reasons for his doubts about the work, and his great expertise on Reynolds' work was upheld in testimony by Sir John Pope-Hennessey. Witnesses for the plaintiff, however, testified concerning the copious publication record of the work and its value, which they placed as high as $450,000.

After a trial of 2 1/2 weeks, the case was dismissed. Justice Becker noted in his decision that the plaintiff had failed to show either negligence or injurious falsehood on the part of the appraisers, and had indeed failed to demonstrate that the painting was authentic. He held that Miss Auslander "did her job as adequately as could be expected under the circumstance and perhaps went beyond the call of duty in seeking the prime authority on the subject painting." The judge stated that it was "highly questionable whether a false statement was made," and that there was no evidence of intended malice. He cited the well-known libel case of *Hahnv. Duveen* as the precedent, as follows: "Whenever a man unnecessarily intermeddles with the affairs of others with which he is wholly unconcerned, such officious interference will be deemed malicious and he will be liable if special damages follow." But the judge ruled that Sotheby's did not become involved unnecessarily, as they were invited by The Metropolitan Museum to make an appraisal. "They were doing their job, they were not voluntarily making statements which could if recklessly made be deemed to be malice."

At the heart of the judgement was the fact that the judge was unpersuaded that Travis had ever intended to make an unconditional offer to the museum. His tendered gift would only be given if he was satisfied with the appraised market value beforehand — and he quite evidently hoped for a very high value. The judge noted the difficulty for the court to reach any conclusion regarding the nature and quality of the painting, hence the extent of the potential wrong. "It must be remembered," he said, "that what we are dealing with here has no objective standards. Each of the experts bases his opinion on his own personal aesthetic considerations and experience. We are in fact attempting to put a label on the amorphous where the authorities place great stress upon such factors as the expression or lack thereof on the subject's face, the positioning of the arms, or the general construction of the body style. In short, we have experts making what they consider to be educated guesses about what transpired over two hundered years ago."

Judge Becker reached the conclusion that "in any event, the plaintiff still has the painting and which testimony by his own experts indicate that it has a value from anywhere from $5,000 to $450,000. And considering he only paid $17,000 for it, it cannot be said that he shall leave this court any unhappier than when he first arrived."

This case clearly exempts art scholars from liability when their opinions are given fairly and without motive. It is not necessary that their opinions be right; rather, they must be based on the best available evidence and on a good faith opinion. To find "malice" it would seem that there be an intent to deliberately injure the owner of a work of art — a situation most unlikely to occur. It thus constitutes an important protection extended to disinterested experts in giving opinions.

Jeanneret v. Vichey

Another decision of serious import to the New York art market has been reversed by the New York Court of Appeals and remanded for retrial. The

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Counsel for Sotheby's discussing the Travis case at the November 17 IFAR Evening on "Legal Liabilities for Art Experts."

case, *Jeanneret v. Vichey* (77 Civ. 301, Jan. 12, 1982, Canella, J.), involves a Nice period painting by Henri Matisse purchased by Marie Louise Jeanneret, a Swiss art dealer, from Luben and Anna Vichey of New York City. The Vicheys had inherited the work from Carlo Frua DeAngeli, a former Italian collector who had lived in Milan, the father of Anna Vichey.

The painting, entitled *Portrait sur fond jaune*, apparently arrived in Switzerland shortly after DeAngeli's death in 1969, and was later shipped to the Vicheys in New York, where it was purchased by Jeanneret in March 1973 for $230,000. In 1974, Jeanneret exhibited the painting at her gallery in Geneva and received three offers for it, all of which she declined as insufficient. Three years later, in 1977, Jeanneret brought suit against the Vicheys, claiming that she was unable to sell the painting or handle it because of "a cloud on its title" due to the fact (as she had learned since purchasing it) that it had been brought out of Italy without a proper export license.

Last year the New York District Court found for the plaintiff and awarded her a sum of $938,000, the contemporary value plus damages and interest — almost four times what she had paid for the painting (see "Caveat Vendor," *SAA*, Jan/Feb 82, p 1). The jury's decision was based on the testimony of three experts and Mme Jeanneret that without certification of legal export, the painting was unsalable.

In November, the Court of Appeals reversed this decision and remanded the case to the lower court for retrial. The court ruled that the jury had been improperly instructed by the District Court on the nature of Italian law, and that it had not been advised as to the importance of the issue of the painting's date on the outcome of the case.

Italy's art export regulations date from 1939, and require that an export license be obtained for any object of cultural importance that was not executed either by a living artist or within 50 years before the exportation. The government has the right to refuse permission for export if the works in question are of great importance to the artistic patrimony of Italy. The date of the Matisse painting is uncertain, but most experts, including Matisse's daughter in a letter written to the plaintiff, judge the work to have been painted in 1923 or 24, less than 50 years before its export from Italy.

A previous Italian statute, effected in 1913, is also concerned with the regulation of art exports. Under these regulations, all exported works, including those by contemporary artists, are controlled by permit. But permits issued under the 1913 regulations are merely administrative, and the government has no power of embargo, as it does under the 1939 provisions. Whether these two conflicting concepts are both in force is not clear, for as Appellate Judge Friendly notes, the 1939 law "speaks with the clarity of the Delphic Oracle," and the cases judged in Italy concerning this issue are also conflicting.

Even if Italian law were clearer, there remain the questions of whether the U.S. courts would recognize and enforce Italy's export policies, and whether these laws really affect the question of title. The District Court held that "the mere casting of a substantial shadow over the title, regardless of the ultimate outcome of that dispute, is sufficient to violate a warranty of good title." But Judge Friendly reached a different interpretation, stating that "the rights of the Italian Government were neither a 'securty interest' nor, in the normal meaning of language, an 'other lien or encumbrance'." He states that the cases cited as precedents by the District Court do not really address the current situation — a purported "cloud" on title originating from something other than a direct financial interest; in fact, the judge notes, there are no New York cases that deal specifically with the current situation.

On the question of United States courts enforcing foreign export statutes, Judge Friendly quotes Professor Paul Bator's article (34 Stanford Law Review at 309): "The fundamental general rule" is that "illegal export does not itself render the importer (or one who took from him) in any way actionable in a U.S. court; the possession of an art object cannot be lawfully disturbed in the United States solely because it was illegally exported from another country."

The stolen works listed in this publication are grouped under six main categories —Fine Arts, Decorative Arts, Antiquities, Ethnographic Objects, Oriental Art, and Miscellaneous. Within these categories, they are further subdivided by object type and school.

*Each listing includes a brief description of the work, the IFAR catalogue number, and the date and place of theft. An asterisk * before the catalogue number means that a photograph of the stolen work is available, though not necessarily included in this issue. Anyone wishing further information on any object should contact IFAR.*

The attributions of the works listed here have been documented as carefully as possible. Bibliographical references are included whenever they have been found. However, IFAR accepts no responsibility for the attribution of any work included in this list.

Fine Arts

Prints and Drawings

American, 20th Century

1227 GOTTLIEB, Adolph (1903-74). Untitled, 1973. Monotype in ink on paper. 41.4 × 31.4 cm. Stamped l/r with estate seal and facsimile signature. Stamped on reverse: © Adolph and Esther Gottlieb Foundation, Inc. Red disc with black splash. *82.453. Toronto, Canada. 1 Oct 82.

1228 SHAHN, Ben (b 1898). Trumpet, Trombone, and Clarinet, 1956. Ink drawing. 40.6 × 50.8 cm. *82.456. Kittery, Me. 24 Jun 82. *Reward.*

Austrian, 20th Century

1229 WACHTEL, Stefanie (b 1871). Portrait of Anna Schonberg, ca 1918-20. Charcoal drawing. Approx 40.6 × 53.3 cm. Reclining figure. 82.383.6. New York, NY. 5 Sep 82. *Reward.*

French, 19th Century

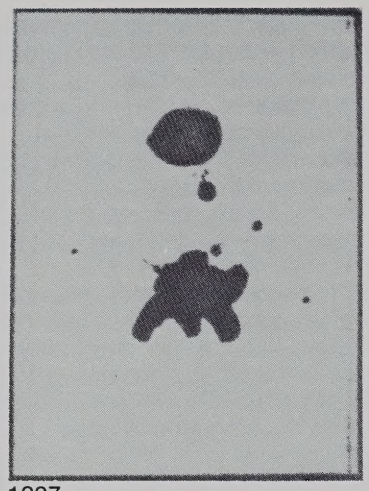
1230 BERTHON, René-Théodore (1777-1859). Les voeux du parlement. Drawing. 24.1 × 35.6 cm. Drawing was cut vertically through the center and a second piece of paper was added at left to change the composition. Very sketchily rendered. 82.231.3. Alexandria, Va. 19 Nov 82.

French, 20th Century

1231 FINI, Leonor (b Argentina, 1908). Goddess. Dry point engraving. 25 × 30 cm. 82.395.7. Paris, France. Summer 82.

1232 LAURENCIN, Marie (1885-1956). Heads of Three Young Girls. Lithograph. 22.8 cm square. Predominantly pink and blue. 82.383.5. New York, NY. 5 Sep 82. *Reward.*

1233 MATISSE, Henri (1869-1954). Femme assise la tête appuyée sur la main, 1929. 15 × 12 cm. No 11/25. Ref: Fribourg no 138. *82.402. London, England. Summer 82.



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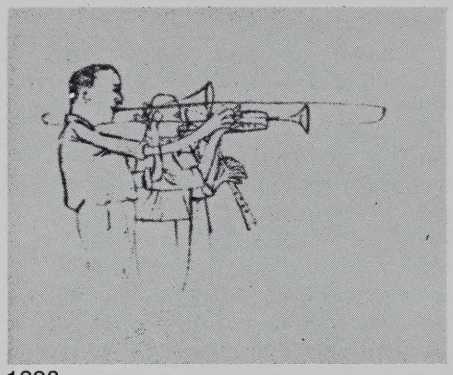

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Italian, 20th Century

1234 PISIS, Filippo de (1896-1956). Portrait of a Child. Gouache drawing. 32 × 25 cm. Signed and dated l/l: 26 VIII. 24. *82.400.7. Turin, Italy. 19 Feb 82.

Spanish, 20th Century

1235 PICASSO, Pablo (1881-1973). Hen, 1952. Lithograph. 56 × 70 cm. Signed l/r: Picasso. Dated u/l: 1952. *82.400.5. Turin, Italy. 19 Feb 82.

1234

1235

Sculpture

Canadian, 20th Century

1236 AIKENHEAD, Steve. Beaked Whale, 1977. Bronze. 11.4 × 30.5 cm. Wt 17.6 kg. Signed, dated and numbered. No 5/5. Cast and copyrighted by Keogh and Aikenhead. *82.397.1. New York, NY. 31 Dec 81.

1237 AIKENHEAD, Steve. Buddha for Our Times, 1977. Bronze with black patina and silver ornaments. H 45.7 cm. Signed and dated underneath. Unique casting. Buddha is sitting in a lotus position with his left hand resting on his knee, palm up. His headdress is topped with a vajra. *82.397.2. New York, NY. 31 Dec 81.

French, 15th Century

1238 St. Jacques. Polychromed wood. Classified French cultural heritage. *82.455. Paris, France. 1982.

French, 19th Century

1239 CARPEAUX, Jean-Baptiste (1827-75). Neapolitan Fisherman with Shell. Bronze. 88 × 112 cm. Fisherman kneeling on his right knee holds a shell in his right hand up to his left ear. *82.434. Paris, France. 1982.

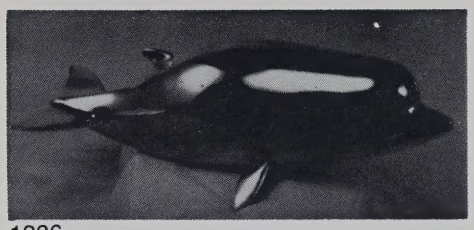
1240 DEGAS, Hilaire Germain Edgar (1834-1917). Study of a Mustang. Bronze. H 22 cm. Ref: John Rewald, Degas Works in Sculpture, New York, 1944, no VIII. *82.42.9. Lambesc, France. 15 Jan 81.

French, 20th Century

1241 SAINT PHALLE, Niki de (b 1930). Empress, 1982. Painted polyester. 20 × 14 × 10 cm. Signed. Seventh edition. Marked: EA 11/111. *82.398. London, England. 17 Aug 82.

Italian, 14th Century

1242 Virgin and Child. Polychromed wood bas-relief. 180 × 100 cm. *82.124. San Miniato (Pisa), Italy. 18 Jul 81.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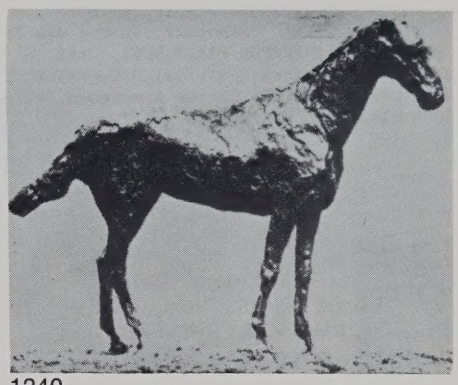
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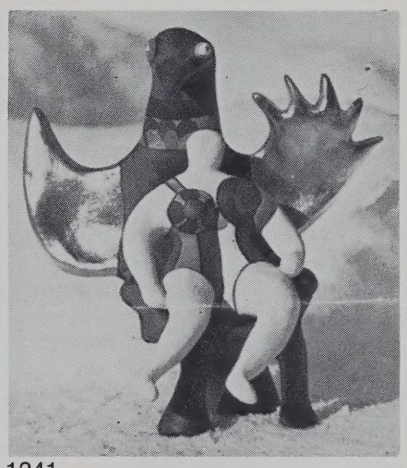
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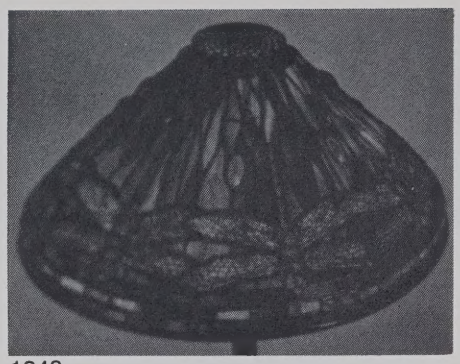
Candlesticks, Candelabra, Lamps

1243 TIFFANY. Cone Dragonfly Lamp. Shade diam 50.8 cm. Ref: Egon Neustadt, The Lamps of Tiffany, New York, 1970, shade p 105, pl 53; base p 143, pl 205. Blue background, rippled glass, red wings. Twisted vine base with Art Nouveau arms. *82.467.2. New York, NY. 13 Jul 82.

1244 TIFFANY. Miniature Dragonfly Lamp. Shade diam 35.6 cm. Ref: Egon Neustadt, The Lamps of Tiffany, New York, 1970, p 130, pl 182. Inverted mushroom base in verdigris bronze. *82.467.3. New York, NY. 13 Jul 82.

1245 TIFFANY. Oil Lamp. Shade diam 45.7 cm. Ref: Koch, Louis C. Tiffany's Glass, Bronzes and Lamps, p 127, pl 196. Green geometric turtle back shade on verdigris bronze base with turtle back inclusions around middle of base. *82.466. New York, NY. 26 Jun 82.

1246 TIFFANY. Peony Lamp. Shade diam 55.9 cm, base h 71-89 cm. Ref: Egon Neustadt, The Lamps of Tiffany, New York, 1970, p 152, pl 215. Pastel peonies with each flower a different color. On a heavy round platform verdigris bronze base. *82.467.1. New York, NY. 13 Jul 82.



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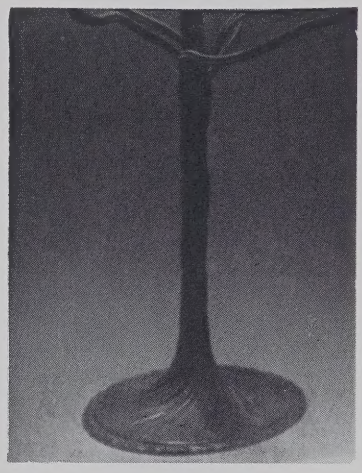

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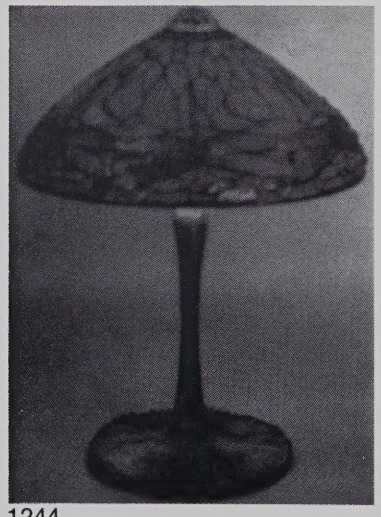

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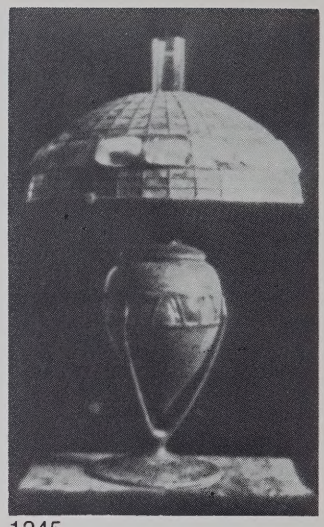

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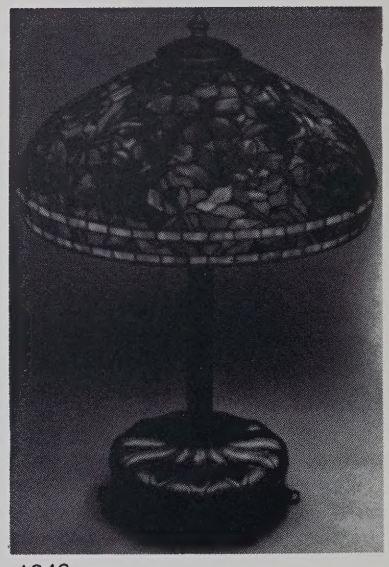

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Clocks, Timepieces, Watches

1247 Boston, Ma. Banjo Clock. Approx h 91.5 cm. Eagle on top. Battle scene painted on glass and the name "Hull" in an oval. 82.231.6. Alexandria, Va. 19 Nov 82.

1248 Grandmother Clock. Engraved brass face and brass rosettes on pediment. Verse inside clock: I labor here with all my might, To tell the time both day and night, Please this example take from me, And serve the Lord as I serve thee. 82.231.7. Alexandria, Va. 19 Nov 82.

1249 MARTIN, W. M. (Royal Exchange, London). Table Clock. Ebony with brass fittings. H 50 cm. 82.463.4. Angerlo, Netherlands. 5 Jul 82.

1250 Namur, Belgium. Louis XV Tall Case Clock, mid-18th c. Work of a master clockmaker of Namur. *82.427.3. Wierde-Namur, Belgium. 6 Oct 81.

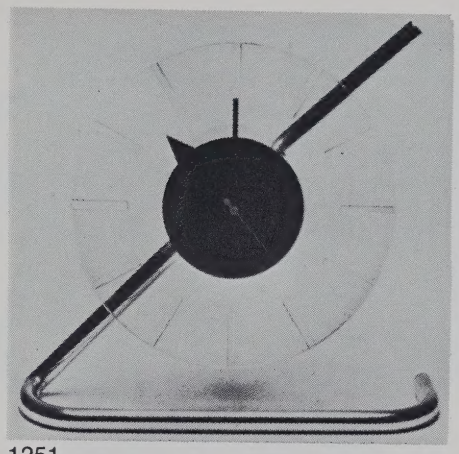
1251 ROHDE, Gilbert (1894-1944). Clock, ca 1933. Chrome, bakelite and glass. 28.6 × 31.8 × 8.3 cm. Produced by the Herman Miller Clock Company. Red minute hand. *82.127. New York, NY. 18 Sep 81.

Enamels

1252 French. Reliquary of St. Geoffrey. Champlevé enamel on wood. 45 × 57 cm. Three plaques on each side of lid depict Christ enthroned in a mandorla with the symbols of the evangelists at center flanked by three standing saints. Base shows standing saints. *82.82. Chalard (Haute Vienne), France. 6 May 81.

1253 French, 13th Century. Reliquary. Enameled bronze. 13 × 14 × 13 cm. Classified as French cultural heritage, June 1891. Both sides of the box are identical. Medallions framed by foliage containing half-length figures of angels on both lid and base. *82.90.1. Vigeois (Corrèze), France. 22 Jul 81.

1254 French, 13th Century. Reliquary. Gilded and engraved bronze. Classified French cultural heritage, June 1891. *82.90.2. Vigeois (Corrèze), France. 22 Jul 81.



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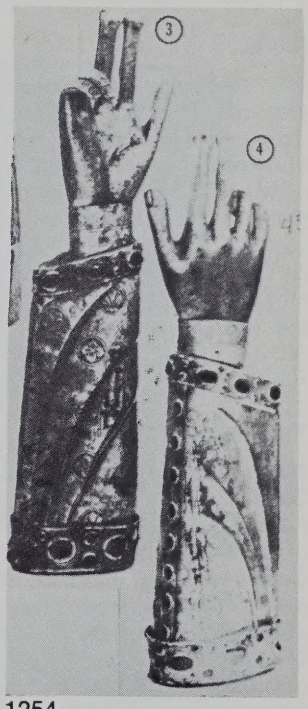

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Jewelry

1255 AIKENHEAD, Steve. Dragon Belt Buckle, 1979. Silver with lapis lazuli. Oval 7.6 × 5.1 cm. Signed and dated. Unique. Set with three small lapis lazuli stones; back coated with blue epoxy. 82.397.3. New York, NY. 31 Dec 81.

Miniatures

1256 JARVIS, John Wesley (1780-1840). Portrait of Judge Anthony Blanchard, 1808. Oil on ivory. Approx h 7.6 cm. Signed and dated above right shoulder. Oval format in a purple velvet frame. *82.408.1. Wayland, Ma. Summer 82.

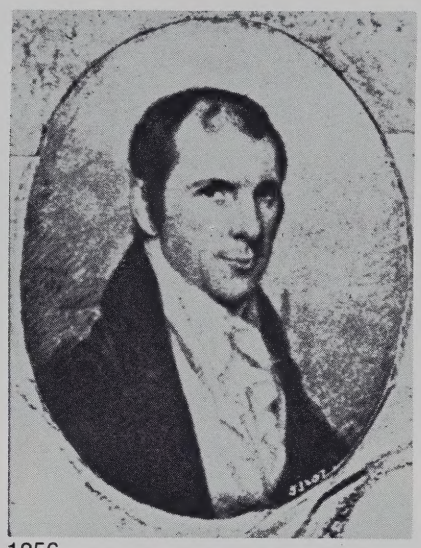
Silver

1257 Austrian, 20th Century. Flatware service for 12. Silver. Monogramed: HS. Consists of complete fish service (fork and knife), four different sizes of spoons, four different sets of forks, three sets of knives, at least 12 large serving pieces, including three cake servers, three large serving forks, three large serving spoons, two gravy ladles, fish server, asparagus server. *82.383.10. New York, NY. 5 Sep 82. *Reward.*

Tapestries, Textiles

1258 Flemish, 16th Century. Biblical Scenes (four). Tapestries. Classified as French cultural heritage. Construction of the Sacrificial Altar, 3.2 × 3.8 m; Red Cow is Burning, Sacrifice for Baal, 3.2 × 4.5 m; Priest Collects the Ashes to be used with Holy Water, Ely and the Priests of Baal, 3.3 × 5.1 m; Coronation of Queen Esther, 3.3 × 4.6 m. *82.451.1-4. Paris, France. 1982.

1259 ROSS, Gloria F. (American, b 1923). Seventh Night. 232.4 × 83.8 cm. Triangular label on back signed by Noland and Ross. Flat-weave tapestry after a painting of the same name by Kenneth Noland. Image and colors are exactly like the painting. Dominant rectangle is apple green with a rose band and a wide tan band beneath it spanning the entire width of the tapestry. Vertical brown stripe at right. 82.325. New York, NY. Apr 82.



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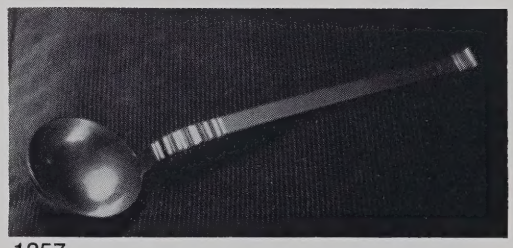

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Antiquities

Near Eastern

1260 Achaemenian manner. Animal-headed Vessel. Gold. Cup has vertical ribs radiating from a base supported by a ram's head. *82.374.7. Abbasi, Iran. 7 Jan 82.

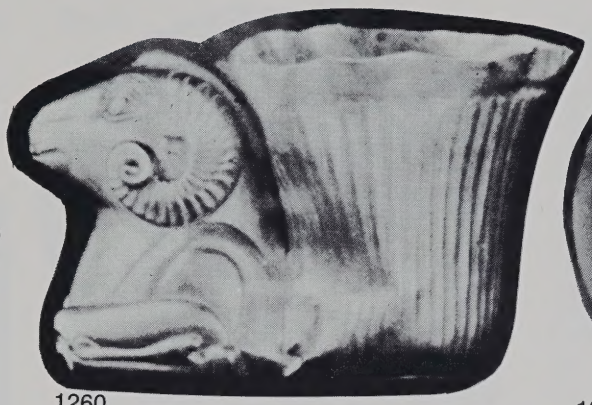
1261 Achaemenian manner. Beaker. Gold. Ref: The Art of the Achaemenians Parthians and Sasanians, Catalogue of the Reza Abbasi Cultural and Arts Centre, 1977, illustrated. *82.374.4. Abbasi, Iran. 7 Jan 82.

1262 Achaemenian manner. Handles. Gold. Horizontally ribbed, surmounted by opposing repoussé ram's heads, pierced with regularly placed holes, ending in a palmette. *82.374.8. Abbasi, Iran. 7 Jan 82.

1263 Achaemenian manner. Plate. Gold. Ref: The Art of the Achaemenians Parthians and Sasanians, Catalogue of the Reza Abbasi Cultural and Arts Centre, 1977, illustrated. *82.374.10. Abbasi, Iran. 7 Jan 82.

1264 Marlik manner. Beaker. Gold. Decorated with a double band of deer and rams in repoussé. 82.374.5. Abbasi, Iran. 7 Jan 82.

1265 Marlik manner. Beaker. Gold. Decorated with two repoussé deer facing in opposite directions with a band of interlacery at the lip. *82.374.6. Abbasi, Iran. 7 Jan 82.



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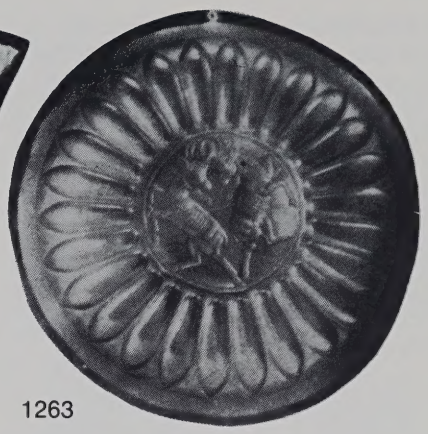

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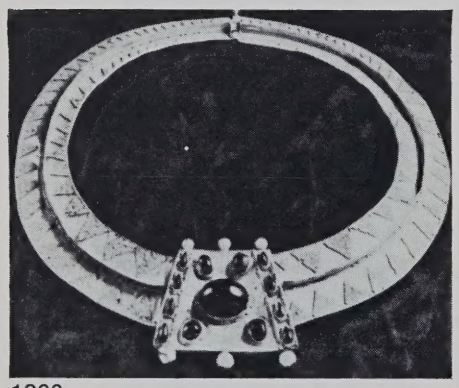
1266 Parthian, 2nd c BC-2nd c AD. Necklace. Gold set with semi-precious red stones. Ref: The Art of the Achaemenians Parthians and Sasanians, Catalogue of the Reza Abbasi Cultural and Arts Centre, 1977, illustrated. Trapezoidal plaque at the front contains a large central stone and four smaller stones around it, flanked by two rows of four stones at the sides. The flat band of the necklace is decorated with two rows of triangular shapes of gold granular beads, separated by an upright gold band. *82.374.2. Abbasi, Iran. 7 Jan 82.

1267 Parthian, 2nd c BC-2nd c AD (?). Necklace. Gold. *82.374.9. Abbasi, Iran. 7 Jan 82.

1268 Sasanian manner. Horse-head Vessel. Silver with gilded bridle, mane, and handles. Ref: The Art of the Achaemenians Parthians and Sasanians, Catalogue of the Reza Abbasi Cultural and Arts Centre, 1977, illustrated. *82.374.1. Abbasi, Iran. 7 Jan 82.

1269 Vessel. Gold. A frieze of repoussé lions in relief surrounds the side of the repoussé bowl. Flaring lip. *82.374.3. Abbasi, Iran. 7 Jan 82.



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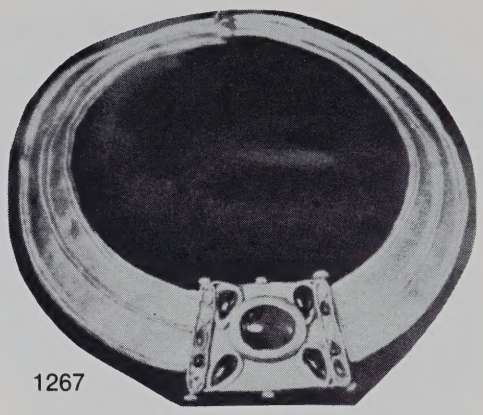


1267

1268

1269

Roman

1270 Head of a Goddess, late 2nd-early 3rd c AD. Marble. H 15.2 cm. *82.464. New York, NY. 30 Nov 82.

1270

Oriental Art

Chinese

1271 Han Dynasty (206 BC-220 AD). Mirror. Bronze frame. Diam 22.8 cm. Round with a knob-like handle in the center of the rear side. Raised figures of humans and dragons around circumference of mirror. 82.382.1. Northfield, Ma. Aug 82.

1272 Ming Dynasty (1368-1643). Vase. Celadon porcelain. Heavy inverted pear-shape, with two animal handles supporting heavy rings. Etched acanthus design beneath celadon glaze. Antique teakwood base. 82.383.8. New York, NY. 5 Sep 82. *Reward.*

1273 Ch'ing Dynasty, 19th Century, Boat of Flowers. Ivory on carved black base. *82.145.25. Villaneuva y Geltrù (Barcelona), Spain. 30 Jan 81.

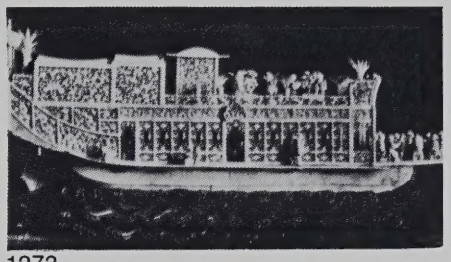
Japanese

1274 MUNAKATA, Shiko (b 1903). Subodai, 1939. Woodcut. 94.6 × 30.5 cm. Ref: Yojuro Yasuda, Munakata, Charles E. Tuttle Co., Rutland, Vt, 1959, pl 17. *82.497.24. Newton, Ma. 21 Nov 82.

Miscellaneous

Books

1275 Italian, 15th-16th Century. Antiphonal. 75 × 60 cm. Contains twelve choral works bound in leather with a copper fastening. *82.420.1. Colle Val e'Elsa (Siena), Italy. 9 Mar 82.



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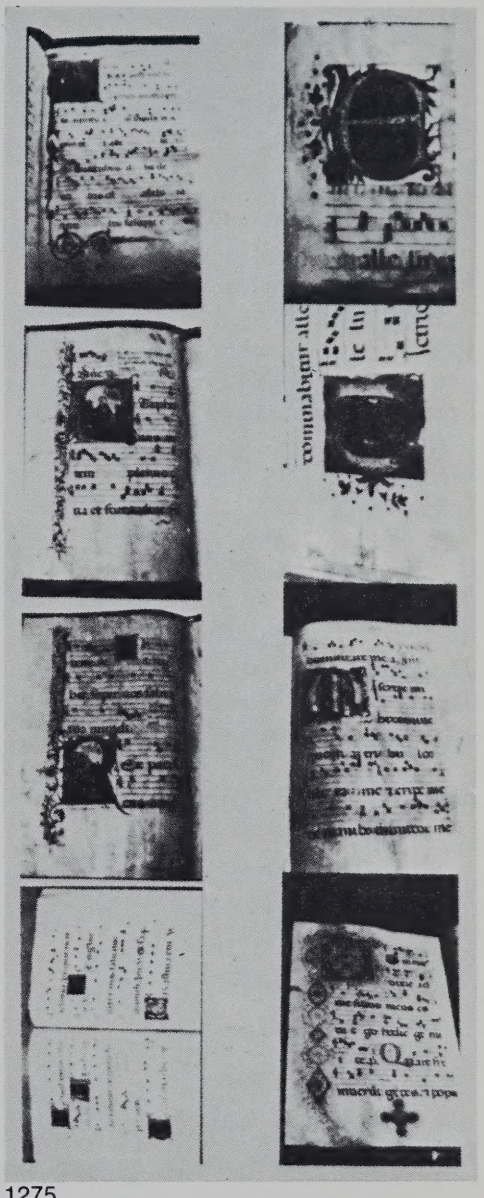

1275

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